

Claims 31-36 are withdrawn from consideration.

Claim 2 is rejected under 35 U.S.C. § 112, second paragraph.

Claims 1-6, 10, 17, 19, 24 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cowman et al., WO 96/00221.

Claims 1-6, 10, 17, 19, 24 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rohringer et al., WO 98/42685.

Claims 11-16, 18, 20-23 are objected to as being dependent upon a rejected base claim.

REMARKS

The undersigned acknowledges that the examiner is correct: claims 1-6, 10-15 and 31-36 are pending and the statement to the contrary in applicants' prior response was in error. Said claims are presented for reconsideration.

Claim 2 is rejected under 35 U.S.C. § 112, second paragraph, the examiner asserting it recites that R_1 , R_2 and R_3 are identical. However this is not what is claimed in claim 2. What claim 2 claims is that both R_1 groups are the same, both R_2 groups are the same and that both R_3 groups are the same, which is fully supported by the disclosure and examples. Reconsideration and withdrawal of the rejection of claim 2 under 35 U.S.C. §112, second paragraph is therefore solicited.

Claims 1-6, 10, 17, 19, 24 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cowman et al., WO 96/00221. Claims 1-6, 10, 17, 19, 24 and 25 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over Rohringer et al., WO 98/42685. Applicants respectfully traverse both of these rejections for the reasons that follow.

The examiner asserts that these publications teach compounds that include those claimed. This is clearly erroneous and is contradicted by the subsequent admission that there is no anticipation.

The examiner subsequently asserts that the compounds in these publications are "closely related" to those claimed, having methyl on the anilino nitrogen [R₂] versus hydrogen. The examiner asserts that compounds that differ only in having H versus methyl are not deemed patentably distinct "absent evidence of superior or unexpected properties". However, applicants respectfully dispute this.

Applicants do not dispute that closely related members of a homologous series are *prima facie* obvious. This arises from the fact that isomers or homologues of prior art compounds would be expected to have analogous physical and chemical properties and moreover are usually obtainable by analogous procedures.

However, compounds of formula (1) wherein R₂ represents, independently, a linear C₁-C₄-alkylene group which is unsubstituted or substituted by hydroxy, C₁-C₄-alkyl, C₁-C₄-alkoxy, C₁-C₄-hydroxy- or alkoxy-alkoxy, -OCOM, -OCOC₁-C₄-alkyl, -CO₂M, CO₂C₁-C₄-alkyl SO₃M or phenoxy which is unsubstituted or substituted by halogen, C₁-C₄-alkyl or C₁-C₄-alkoxy, -CO₂M or -CO₂C₁-C₄-alkyl, NH₂ or mono- or disubstituted amino; or phenyl which is unsubstituted or substituted by 1 to 3 SO₃M, SO₂NHC₁-C₄-alkyl, -SO₂NH₂, -CO₂M, -CO₂C₁-C₄-alkyl, -CONH₂, -CONHC₁-C₄-alkyl, -NHCOC₁-C₄-alkyl or mono- or disubstituted amino groups as presently claimed, are not isomers or homologues of prior art compounds wherein R₂ is hydrogen. Rather, they are amines of a different series, i.e. **tertiary** versus **secondary** amines. While all amines share some common properties, it is indisputable that amines of a different series also have some significantly different physical and chemical properties. Hence the presumption of "similar properties" is invalid or at least merely speculative. Moreover, the compounds of the invention cannot be prepared by conversion of known secondary amines, for example, by alkylation, but, rather, are derived from completely different starting materials. This further weakens any presumption of similarity.

Applicants also note that triazinyl stilbene optical brightening agents have been known for over 40 years. During that time virtually every aspect of these molecules has been varied in the search for improved optical brighteners, except for the instant R₂ position. How, after all these years, could such a modification have been obvious at the time the present invention was made, except in hindsight. But hindsight is a clearly inadequate basis for a rejection under 35 U.S.C. § 103(a).

Reconsideration and withdrawal of the rejection of claims 1-6, 10, 17, 19, 24 and 25 is respectfully solicited in light of the remarks *supra*.

Moreover, since claim 1 has been shown to be allowable, reconsideration and withdrawal of the objection to 11-16, 18, 20-23 as being dependent upon a rejected base claim is also solicited.

Finally, applicants remind the examiner of the *In re Ochiai* [37 USPQ2d 1127(CAFC, 1995)] and *In re Brouwer* [37 USPQ2d 1663 (CAFC, 1995)] Court decisions and the Commissioner of Patents and Trademarks' OG Notice concerning them entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer*, and 35 U.S.C. § 103(b)", 1184 Off. Gaz. Pat. Office 86 (March 26, 1996) in this regard. According to the Guidance

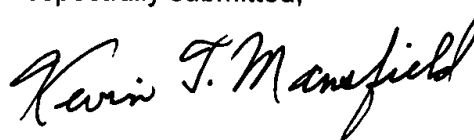
... to facilitate examination under §103, where product and process claims are presented in the same application, applicant may be called upon under 35 U.S.C. § 121 to elect claims to either the product or process. The claims to the non-elected invention will be withdrawn from further consideration. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.

In accord with the guidelines, on finding the product claim to be allowable, rejoinder of claims 31-36 is respectfully requested.

Since there are no other grounds of objection or rejection, passage of this application to issue with claims 1-6, 10-15 and 31-36 is earnestly solicited.

Applicants submit that the present application is in condition for allowance. In the event that minor amendments will further prosecution, Applicants request that the examiner contact the undersigned representative.

Respectfully submitted,



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